In the High Court of Judicature at Madras

Dated: 20.02.2006

Coram:

The Honourable Mr. Justice S.R.SINGHARAVELU

Civil Revision Petition (NPD) No.288 of 2002

P.M.S.Pakkir Mohideen ..Petitioner/Tenant

..vs..

K.Susila ..Respondent/Landlord

Civil Revision Petition filed under Section 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act, against the Order in R.C.A.No.246 of 1998 dated 07.12.2001 on the file of VIII Judge, Small Causes Court, Chennai in reversing the order passed in R.C.O.P.No.1825 of 1995 dated 29.01.1998 on the file of XI Judge, Small Causes Court, Chennai.

For Petitioner : Mr.V.Raghavachari

For Respondent : Mr.P.Kalpa Reddy

ORDER

Tenant is the revision petitioner. Aggrieved over the order of eviction passed on 07.12.2001 in R.C.A.No.246 of 1998 on the file of VIII Judge, Small Causes Court, Chennai, which reversed the dismissal order dated 29.01.1998 of R.C.O.P.No.1825 of 1995 that was filed for eviction under section 10(3)(a)(iii) of Tamil Nadu Buildings (Lease and Rent Control) Act, (hereinafter referred to as 'the Act') on the file of XI Judge, Small Causes Court, Chennai, this revision petition has been filed.

2. The tenament is measuring 7 feet x 19 feet in the ground floor of premises No.442, Mint Street, Chennai-79, which was let out for non-residential purpose to the revision petitioner / tenant.

3. In one portion of the same building, the respondent/ landlady is having residence. She wanted the tenaments for owner's occupation inasmuch as she wanted to shift the goldsmith business of his sons Damodaran and Ganesan from the rented shop at No.67, Edapalayam Street, Madras. There was also a goldsmith licence issued by the competent authority in favour of the two

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sons of the respondent/ landlady. It was found that the landlady does not own any other premises except the petition mentioned one. There is also no need for any threat of eviction to the sons of landlady from their rented premises at Edapalayam Street, Madras. Even without the threat, a landlady can bona fide apply for owner's occupation. It is not also as if the tenant can dictate to the landlady to select a particular portion. On the other hand, the landlady can choose the portion, for which she wants eviction.

4. The only required element is that her requirement is bona fide and that she had no other premises available in the City. In this particular case, the bona fides of the requirement, namely, that the sons of the respondent/ landlady are to be accommodated for their carrying on business of goldsmith, cannot be questioned in view of the fact that they have produced the licence therefor by the competent authority. It is also not the case that the landlady has some other portion available in the City.

5. The learned counsel for the revision petitioner / tenant has submitted that the petition should have been filed under section 10(3)(c) of the Act and not under section 10(3)(a)(iii) of the Act. According to him, since the building is the same where landlady resides in one portion and required other portion for non-residential purpose that should be claimed only by way of additional accommodation under section 10(3)(c) and not for owner's occupation under section 10(3)(a)(iii) of the Act.

6. In this connection, reliance was placed upon the decision SHRI BALAGANESAN METALS ..vs.. M.N.SHANMUGAM CHETTY AND OTHERS reported AIR 1987 SC 1668, wherein the following observation was made.

> "15. Since S.10(3)(c) provides for both situations viz., a landlord occupying a part of a building which is residential or non-residential, the sub-clause can be read separately so as to have reference exclusively to a residential building or a non-residential building..... The proper way of distinctively viewing the section should be as under:
>
> A landlord who is occupying only a part of a residential building may notwithstanding anything contained in Cl.(a), apply to the Controller for an order directing any tenant occupying the whole or any portion of the remaining part of the building to put the landlord in possession thereof, if he requires

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additional accommodation for residential purposes or for purposes of a business which he is carrying on, as the case may be.

A landlord who is occupying only a part of a non-residential building may notwithstanding anything contained in Cl.(a), apply to the Controller for an order directing any tenant occupying the whole or any portion of the remaining part of the building to put the landlord in possession thereof, if he requires additional accommodation for residential purposes or for purposes of a business which he is carrying on, as the case may be.

16. If Cl.(3) is construed in this manner there can be no scope for a contention that a landlord can seek additional accommodation for residence only if the building is a residential one and likewise he can seek additional accommodation for business purposes only if the building is a non-residential one.

17. There are several reasons which persuade us to take this view. In the first place it has to be noted that S.10(3)(c) stands on a different footing from S.10 (3)(a)(i) and S.10(3)(a)(iii). It is not a case of a landlord not occupying a residential or non-residential building of his own but a case of a landlord occupying a part of a residential or non-residential building of his own and putting it to such user as deemed fit by him. Since the requirement of additional accommodation by the landlord is with reference to the manner of his user of that part of the building which is in his occupation it is the nature of that requirement that should prevail over the manner of user of the tenant of the portion leased out to him. In other words, the additional accommodation is for extending the user of the building by the landlord to the leased portion for the same purpose for which the portion not leased out is being put to. Such being the case when the landlord is genuinely in need of additional accommodation for residential or non-residential requirements, as the case may be, he can be given relief only if the tenant occupying the other portion of the building is asked to vacate. If it is to be held that S.10(3)(c) can be invoked only if the nature of the requirement of the landlord and the nature of user of the leased portion by the tenant coalesce then the landlord will be left without any remedy when the nature of his need and the nature of the user of the leased portion by the tenant do not tally.

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23. In the light of our conclusion we approve the ratio in K.Parasuramaiah ..vs.. Lakshmamma (AIR 1965 A.P.220)(supra) and disapprove the ratio in Thirupathy .. vs.. Kanta Rao (ILR (1981) 1 Mad 128) supra".

7. Originally, the Division Bench of the High Court of Andhra Pradesh in a case K.PARASURAMAIAH ..vs.. LAKSHMAMMA reported in AIR 1965 AP 220 has held that the landlord can seek eviction of the tenant for additional accommodation as per the landlord's existing usage of a portion of the building, irrespective the purpose for which it was let out.

8. The above view was reversed by a Division Bench of this Court in a case reported in M/s.M.THIRUPATHI NADAR & SONS ..vs.. DR.S.L.KANTHA RAO ILR 1981(1) Madras 128, wherein it was held that the landlord occupying a portion of the building for residential purpose can seek eviction of the tenant for additional accommodation only if the tenant also occupies a residential portion.

9. This was again reversed by the Supreme Court in the case reported in SHRI BALAGANESAN METALS CASE1987 (2) SCC 707, which is reproduced above.

10. But the Supreme Court has held in a later judgment KANNIAMMAL ..vs.. CHELLARAM reported in 2002(4) SCC 627 that to seek eviction of a tenant, the landlord shall proceed under section 10(3)(c) of the Act if the eviction is sought for on the ground of additional accommodation for the purpose of the existing usage of the landlord i.e.if landlord is in a portion of the building for residential use the landlord can seek additional accommodation for same purpose of residential use and if the landlord is using a portion of the building for non-residential purpose the additional accommodation can be sought, for the same purpose of non-residential use irrespective of the usage of the tenanted portion by the tenant. The existing usage of a portion of the building by the landlord prevails over the usage of the tenanted portion by the tenant for additional accommodation.

11. It has been further clarified by the said judgment that if the landlord using a portion for residential purpose wants another portion of the said premises under occupation of the tenant for non-residential purposes then the landlord has to proceed under section 10(3)(a)(iii) for owner's occupation and not under section 10(3)(c) which deals with the additional accommodation for the existing usage of the landlord. In the same way if the landlord is in occupation of a portion of the premises for non-residential purpose and wants to evict the

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tenant for residential purpose then also 10(3)(a)(iii) shall be resorted.

12. The relevant portion of the observation made in KANNIAMMAL's case is as follows:

> "Section 10(3)(c) came up for the consideration of this Court in Shri Balaganesan Metals ..vs.. M.N.Shanmugham Chetty & Others., (1987(2) SCC 707. The provision was dealt with in-depth, analysed and made clear. This Court held that Clause (c) makes provision enabling a landlord to seek the eviction of any tenant occupying the whole or any portion of the remaining part of the building for residential or non-residential purposes for satisfying the additional need of the landlord irrespective of whether the need is for residential or business purpose.

It was further held as follows:

> Since the requirement of additional accommodation by the landlord is with reference to the manner of his user of that part of the building which is in his occupation it is the nature of that requirement that should prevail over the manner of user of the tenant of the portion leased out to him. In other words, the need for additional accommodation is for extending the user of the building by the landlord to the leased portion for the same purpose for which the portion not leased out is being used. It is not the requirement of Section 10(3)(c) that the nature of the requirement of the landlord and the nature of the user of the leased portion by the tenant should coalesce. That being the position of law, section 10(3)(c) would not cover the present case where the landlady is occupying the note leased out portion of the building for residential purpose and the requirement for additional accommodation in another part of the building is for a non-residential purpose"

13. In this case also, as per the above observation made in the KANNIAMMAL's case, the requirement is rightly covered under section 10(3)(a)(iii), upon which the rent control petition was filed and there is no need for invoking section 10(3)(c) of the Act in the given facts of the case. Hence, I am of the view that there is no irregularity in the finding given by the Rent Control Authority and I concur with the same.

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14. For the reasons stated above, the civil revision petition fails and is dismissed and the order passed by the Rent Control Appellate Authority is confirmed. Time for eviction six months. No costs.

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Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1.The Registrar,
Court of Small Causes,
Madras.

2.The Section Officer
VR Section
High Court
Madras.

+ one cc to Mrs.P.Kalpa Reddy, Advocate Sr.No.7748.

TEJ (CO)
RSM/13.3.2006

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